IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5434 OF 2003

1) Union of India,)
through the Secretary,)
Ministry of Finance,)
Department of Revenue,)
New Delhi. ...)
2) Commissioner of Central)
Excise, Headquarters Mumbai)
- I, Central Excise Building,)
Maharishi Karve Road,)
Churchgate, Mumbai.).... Petitioners.

Versus

D. S. Bhavar, U. D.C. in the)
legal Cell of Central Excise,)
Headquarters, Mumbai - V.)..... Respondent.

Mr. P. M. Pradhan for the Petitioners.

Mr. G. K. Masand with Ms. R. Singh and
Smt. S.D.Gulhane for the Respondent.

CORAM : V.G. PALSHIKAR, and

V.R.KINGAONKAR, JJ.

DATED : 13TH APRIL, 2006.

JUDGMENT (Per : V.R.KINGAONKAR, J.):

By this petition, Petitioners impugn order dated 23rd August, 2002 in Original Application No. 1120 of 1998 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai (for short "the Tribunal").

2. Some of the facts, which are relevant for the present purpose, may be stated. The Respondent was recruited somewhere in 1975 on the post of Lower Division Clerk ("LDC" for short) and was promoted somewhere in 1979 as Upper Division Clerk ("UDC" for short). Along with some others, he was promoted on adhoc basis on 3rd November, 1983 as Inspector (OG). He was suspended on 10th October, 1984 as a result of registration of crime by the Central Bureau of Investigation. The suspension was revoked on 14th June, 1985 and while doing so, he was reverted to the substantive post as UDC instead of placing him in the post of Inspector (OG) which he was holding as adhoc promotee at the time of suspension. A charge sheet was filed against him for holding departmental enquiry but the same was withdrawn and a fresh charge sheet was filed against him on 13th October, 1998.

3. The Respondent challenged his reversion or rather placement as UDC, instead of his reinstatement in the promotional post as Inspector (OG), by filing Original Application No. 1120 of 1998 before the Tribunal. The Tribunal allowed his application and declared that the order of reversion is illegal and hence quashed the same. The Tribunal directed that the Respondent would be entitled to receive notional benefit till the date of his representation i.e. 21st May, 1998 and thereafter he would be entitled to all the monetary benefits arising out of the said promotional posting.

4. The only material question which arises for determination is thus :

> "Whether at the time of reinstatement of the Respondent vide order dated 26th November, 1985 he was entitled to be reinstated in the promotional post of Inspector (OG), which he held only on adhoc basis at the time of suspension, and not as UDC i.e. the substantive post for which he had the lien ?"

5. We have considered rival submissions of learned Counsel for the parties. On behalf of the Petitioners, learned Counsel Shri Pradhan, contended

that this is not a case of reversion as a result of penalty but it was only incidental placement of the Respondent in the substantive post when the suspension came to be revoked. He argued that the Tribunal committed error in granting relief to the Respondent and giving benefit of notional benefits. On the other hand Shri Masand, learned Counsel for the Respondent submitted that when the Respondent was exonerated from the charges in the Departmental Enquiry, there could not have been demotion at the time of his reinstatement. It is contended that the Tribunal has rightly granted benefits of the notional promotion to the Respondent since the others, who were given adhoc promotion likewise the Respondent, have been promoted in due course. It is argued that the Respondent cannot be singled out and penalised without any finding about his culpability and when the charges were dropped in the departmental proceedings.

6. Before going to the merits of the matter, it may be stated that the Respondent and others were promoted to the post of Inspector (OG) on adhoc basis vide Establishment Order No. 302/83 (Exh."B"). The promotion was dehors the Rules since under the Recruitment Rules the promotional post of Inspector (OG) provides for criteria of 5 years service in the

feeder post. The Respondent had not put in 5 years service in the feeder post and as such was not eligible for regular promotion as Inspector (OG) at the time of his adhoc promotion. The promotion was by way of stopgap arrangement and as such it can be regarded as fortuitous. The relevant part of the said order may be extracted as below:

> "It is also ordered that the promotions are purely provisional and adhoc and the period of adhoc promotion will not count towards Seniority and will not confer any right on the persons concerned for regular promotion on a subsequent date, nor will they be entitled to absorption in the cadre on the basis of such adhoc promotion."

Needless to say, the Respondent had no legal right to claim regular promotion as Inspector (OG) and his adhoc promotion did not confer any right on him to claim such post.

7. Now, crux of the problem is as to whether the revocation of the suspension automatically could give right to the Respondent for claiming the promotional post on which he was appointed only by way of stopgap arrangement i.e on adhoc basis. It is not in dispute

that for a regular promotion Departmental Promotion Committee was required to process the matter. The case of the Respondent was not considered by the DPC and was not cleared for such appointment on promotional post. The others, who were promoted likewise the Respondent, were cleared by the DPC after regular process and as such were promoted during the period in which the Respondent was under suspension. The suspension of the Respondent had eclipsed his claim for promotion. The reinstatement order dated 26th November, 1985 (Exhibit "C") does not show, even remotely, that it is due to any disciplinary proceeding that the Respondent was reverted to the cadre of UDC. As a matter of fact, after reinstatement he was brought back to his substantive post of UDC. He had no substantial right for appointment on the promotional post as Inspector (OG) since his such promotional tenure was by way of stopgap arrangement without conferment of any right on him so as to claim a regular promotion.

8. We cannot be oblivious to the fact that the Respondent was not borne in the cadre of Inspector (OG). He was member of the lower cadre i.e. of UDC. There is no magic in the process of reinstatement to transpose the Respondent from the cadre of UDC to the

cadre of Inspector (OG) without his actual and regular promotion. The Respondent has not gone through the process of DPC for regular promotion as per the Recruitment Rules. Obviously, he could not be reinstated in the cadre of Inspector (OG) after revocation of the suspension. Indeed, his placement in the substantive post as UDC cannot be termed as reversion after the revocation of suspension order.

9. The Tribunal has observed that the Respondent did work in the promotional cadre for nearly about 2 years. The relevant observations are thus:

> "The applicant was promoted to the post of Inspector (OG) vide order dated 3.11.1983 though on adhoc basis, was suspended on 10.10.1984 which was revoked on 14.6.1985 and thereafter reverted vide order dated 26.11.1985. By that time the applicant continued as Inspector (OG) on adhoc basis for nearly about two years. Whether in such circumstances, the reversion order of the applicant can be held justified ?"

There appears some error committed by the Tribunal while coming to the conclusion that the Respondent continued as Inspector (OG) on adhoc basis for nearly

about two years. As can be gathered from the record, he actually worked only for about 10 months in the said cadre and thereafter was suspended. The tenure was so short that he could not have claimed absorption / regularisation in the promotional cadre by virtue of such period of service in the promotional cadre.

10. It appears that the Tribunal held that reinstatement of the Respondent as UDC amounted to reduction in rank without there being an inquiry and as such it is violative of Article 311(2) of the Constitution. The Order No. 303/85 (Exhibit "C") does not show that it is outcome of any departmental action. It is not stigmatic, nor it can be termed as reduction in rank. For, the Respondent was only an adhoc promotee and his membership continued in the cadre of UDC. Obviously, the Tribunal committed error while holding that the said order amounted to reduction in rank. It is difficult to appreciate as to how could the placement of Respondent in his substantive post be regarded as reduction in rank. An adhoc promotee has no right to continue in the same cadre when the promotion is dehors the Rules and only made as stopgap arrangement so as to meet out the administrative exigency. The Tribunal appears to be oblivious of the eligibility criteria and yet repelled

contentions of the present Petitioners without satisfactory reason. The Tribunal has observed:

> "As per Recruitment Rules, minimum 5 years regular service in the grade of UDC is required. Thus, on one hand respondents have placed reliance on Ex.1, acted accordingly, now taking shelter of Recruitment Rules, other persons who were promoted along with the applicant how they were dealt with did not place on record. In view of the said situation, the respondents cannot be permitted to take advantage of their own wrong, if any as they are estopped based on principle of estoppel."

11. We are unable to persuade ourselves with the logic applied by the Tribunal to the core issue involved in the present matter. There is no scope to apply principle of estoppel against the present Petitioners when other persons, who are not placed in similar situation, have been promoted. There was no obligation on the present Petitioner No.2 to explain case of each other employee who was promoted on adhoc basis along with Respondent and was subsequently promoted on regular basis. The Respondent had no right to claim promotion without his case being

considered by the DPC. He, at the most, had right to be considered for promotion since he was within the zone of promotion. However, there is no inherent right of promotion. As stated before, the Respondent had not completed 5 years of continuous service in the cadre of UDC and was not regularly promoted as Inspector (OG). The others, who continued to remain as adhoc promotees in that cadre, might have been given regular promotions in due course of time but the Respondent could not get any advantage of such a situation. The Tribunal has committed error while holding that the present Petitioners are estopped on the basis of the principle of estoppel because some other adhoc promotees were subsequently given regular promotion.

12. Learned Counsel for the Respondent sought to rely upon sub-rule 5 of Rule 54 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. It is contended that after revocation of the suspension the Respondent ought to be reinstated as Inspector (O.G.) since it was the only way to regularise his services for period spent during suspension. The period spent by the Respondent during existence of the suspension order must be regularised under the Rules. The revocation of suspension order

is one aspect and regularisation of the services during the period of suspension is another aspect. We do not find any substance in the contention of the learned Counsel for the Respondent. The impugned order practically amounts to confirmation of the Respondent in promotional post without his earning of such promotion under the Rules.

13. The sum total of foregoing discussion is that the impugned order is improper, incorrect and deserves to be set aside. The reinstatement of the Respondent as UDC, which is wrongly termed as reversion, is proper and legal. The Tribunal has committed error while granting the Original Application filed by the Respondent. Hence, we allow the Petition and set aside the impugned order. Rule made absolute in the above terms. No order as to costs.

Sd/-

(V.G.PALSHIKAR, J.)

Sd/-

(V.R.KINGAONKAR, J.)